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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

UILs: 402.08-00  
402.08-05

NOV - 3 2008

LEGEND:

Decedent A:

Taxpayer B:

Company A:

Institution B:

Plan X:

IRA Y:

Trust T:

State U:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Amount 1:

T:EP:RA:T3

Amount 2:

Amount 3:

Dear \_\_\_\_\_ :

This is in response to the \_\_\_\_\_ request for letter rulings under section 402(c) of the Internal Revenue Code ("Code") submitted on your behalf by your authorized representative. The ruling request has been supplemented by correspondence dated 1 \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. The following facts and representations support your ruling request.

**FACTS:**

Decedent A, whose date of birth was Date 1, 1951, died on Date 2, 2007 a resident of State U. Decedent A was survived by his wife, Taxpayer B, whose date of birth was Date 3, 1952.

At his death, Decedent A was a participant in Plan X sponsored by Company A. The amount due Decedent A from Plan X, pursuant to Plan terms, was approximately Amount 1. It has been represented that Plan X was and is qualified within the meaning of Code section 401(a).

On Date 4, 2007, Decedent A executed his Last Will and Testament. Section 2.1 of Decedent A's Last Will and Testament names Taxpayer B as the Personal Representative of Decedent A's Estate. Article III of Decedent A's Last Will and Testament provides for specific bequests not pertinent to this ruling request. Article 4.1 of Decedent A's Last Will and Testament provides that the remainder of Decedent A's estate shall be given to the trustee of Trust T.

On Date 4, 2007, Decedent A and Taxpayer B executed Trust T. The Preamble to Trust T provides that Decedent A and Taxpayer B are the Settlers thereof. At the death of Decedent A, Taxpayer B became the sole trustee of Trust T.

Section 2.1 of Trust T provides, in relevant part, that "...After the death of one of the Settlers, this Agreement may be revoked partially or completely or amended in any respect by the surviving Settlor. The power to amend or revoke may be exercised by Settlers (or one of them) at any time and without the consent of Trustee or anyone else, but the revocation or amendment must be in writing".

Section 3.13(a) of Trust T, in relevant part, provides that either Settlor serving as Trustee of Trust T may make discretionary distributions of Trust T income or property to

himself/herself without regard to amounts necessary for said Trustee's health, education, maintenance or support.

Section 7.43 of Trust T provides, in relevant part, that a Trustee thereof may "Direct the payout of benefits from retirement plans..."

Section 9.1 of Trust T provides that Trust T is established under the law of State U.

On Date 5, 2007, Decedent A executed a beneficiary designation applicable to his interest in Plan X. In said beneficiary designation, Decedent A named Trust T as the primary beneficiary of his interest in Plan X. Taxpayer B consented to said beneficiary designation. It has been represented that the Date 5, 2007 beneficiary designation remained in effect as of the date of Decedent A's death.

On or about Date 6, 2008, pursuant to Section 2.1 of Trust T, Taxpayer B, as Settlor and Trustee of Trust T, executed the First Amendment to Trust T which amended and terminated Trust T. In relevant part, the First Amendment to Trust T provides that Taxpayer B will direct the distribution of amounts due Decedent A under Plan X and the deposit of said distributed amounts into IRA Y, an IRA set up and maintained in the name of Taxpayer B, with Institution B.

On or about Date 7, 2008, the administrator of Plan X distributed a check in the amount of Amount 2 representing Decedent A's Plan X interest (less Federal withholding) to the Estate of Decedent A. On or about Date 8, 2008, Amount 2 was deposited into IRA Y. Additionally, on or about Date 8, 2008, Amount 3, representing the Federal withholding on the Date 7, 2008, Plan X distribution, was also distributed into IRA Y. Date 8, 2008 was within 60 days of Date 7, 2008.

**RULINGS REQUESTED:**

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. Taxpayer B, as the surviving spouse of Decedent A, and the individual entitled to receive amounts standing to Decedent A's credit under Plan X, was the payee or distributee of said amounts. As such, pursuant to Code section 402(c)(9), she was eligible to contribute amounts distributed from Plan X, not to exceed Amount 1, into IRA Y, an IRA set up and maintained in her name;
2. The Date 8, 2008 rollover contribution(s) of amounts totaling Amount 1 into IRA Y constituted a rollover transaction within the meaning of Code section 402(c); and

3. Our answers to ruling requests (1) and (2) are not affected by the Plan X's administrator's issuing the Date 7, 2008 Plan X distribution check to the Personal Representative of the Estate of Decedent A instead of the appropriate recipient, the Trustee of Trust T.

**LAW:**

With respect to your ruling requests, section 402(c)(1) of the Code provides, generally, that if any portion of an eligible rollover distribution from a section 401(a) of the Code qualified retirement plan is transferred into an eligible retirement plan, the portion of the distribution so transferred shall not be includible in gross income in the taxable year in which paid.

Section 402(c)(2) of the Code provides that the maximum amount of an eligible rollover distribution to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)) but states that this maximum limitation does not apply to a distribution transferred to an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

Section 402(c)(4) of the Code defines "eligible rollover distribution" as any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust except the following distributions:

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made --

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent the distribution is required under section 401(a)(9), and

(C) any distribution which is made upon the hardship of the employee.

Section 402(c)(8)(B) of the Code defines eligible retirement plan as (i) an individual retirement account described in section 408(a), (ii) an individual retirement annuity described in section 408(b) (other than an endowment contract), (iii) a section 401(a) of the Code qualified retirement plan, (iv) an annuity plan described in section 403(a), (v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and (vi) an annuity contract described in section 403(b).

Section 402(c)(3)(A) of the Code provides, generally, that, except as provided in subparagraph (B), section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 1.402(c)-2, Question and Answer 11, of the Income Tax Regulations states that if an eligible rollover distribution is paid to an employee and the employee contributes all or part of the eligible rollover distribution to an eligible retirement plan no later than the 60th day following the date the employee received the distribution, the amount contributed is not currently includible in gross income.

Section 402(c)(9) of the Code provides, generally, if a distribution attributable to an employee is paid to the spouse of the employee after the employee's death, section 402(c) of the Code will apply to such distribution in the same manner as if the spouse were the employee.

Section 1.402(c)-2 of the regulations, Q&A 12, provides, generally, that if a distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. Thus, a distribution to the surviving spouse of an employee is an eligible rollover distribution if it meets the applicable requirements of section 402(c)(2) and (4) and the associated regulations.

Section 1.402(c)-2 of the regulations, Q&A 7(b) provides that any amount that is paid before January 1 of the year in which the employee attains (or would have attained) age 70 ½ will not be treated as required under section 401(a)(9) and thus is an eligible rollover distribution if it otherwise qualifies.

#### ANALYSIS:

The rulings requested in this case present two, distinct, issues. The first is whether Taxpayer B, as Decedent A's surviving spouse, and as Settlor, Trustee and beneficiary of Trust T, was entitled to contribute an amount, not to exceed Amount 1, distributed from Plan X, into an IRA set up and maintained in her name.

With respect to this issue, generally, if either a decedent's qualified retirement plan accounts or IRA amounts pass through a third party such as a trust or an estate, the surviving spouse will be treated as acquiring them from the third party and not from the decedent, and would not be eligible to roll over the distributions into an individual retirement account (IRA) set up and maintained in the surviving spouse's name. However, there are exceptions to the general rule.

With respect to this case, we note that relevant provisions of Trust T gave Taxpayer B the power to amend and/or revoke Trust T, the power to control disposition of Trust T assets that consist of amounts distributed from qualified plans, and the power to make

discretionary payments to herself without regard to whether said distributions were needed for Taxpayer B's health, education, maintenance or support. Pursuant to said authority contained in Trust T of which Decedent A was a co-settlor and which was in existence at the time of Decedent A's death, Taxpayer B amended and revoked Trust T to provide that amounts due Trust T at the death of Decedent A and payable to Trust T from Plan X were to be contributed to IRA Y, an IRA set up and maintained in the name of Taxpayer B, Decedent A's surviving spouse, who was entitled under the provisions of Trust T to receive said amounts.

Thus, in this case, Taxpayer B's rights under the terms of Trust T, as amended pursuant to provisions of Trust T in effect as of the date of Decedent A's death, were sufficient for her to direct payment of the Date 7, 2008 Plan X distribution referenced herein into IRA Y.

Thus, with respect to your first two ruling requests, we conclude as follows:

1. Taxpayer B, as the surviving spouse of Decedent A, and the individual entitled to receive amounts standing to Decedent A's credit under Plan X, was the payee or distributee of said amounts. As such, pursuant to Code section 402(c)(9), she was eligible to contribute amounts distributed from Plan X, not to exceed Amount 1, into IRA Y, an IRA set up and maintained in her name; and
2. The Date 8, 2008 rollover contribution(s) of amounts totaling Amount 1 into IRA Y constituted a valid rollover transaction within the meaning of Code section 402(c).

With specific respect to your third ruling request, we note that the Date 7, 2008 Plan X distribution in the amount of Amount 1 (which includes Federal withholding) should have been paid to Taxpayer B in her role as Trustee of Trust T and then contributed to IRA Y. However, said distribution was made to Taxpayer B as the Personal Representative of the Estate of Decedent A who then contributed it into IRA Y. Although the distribution should not have been made to Taxpayer B, as Personal Representative, we note that Taxpayer B was also the Trustee of Trust T, and as such, could have taken the steps necessary to insure that the Plan X distribution was paid to Taxpayer B, as beneficiary of Trust T entitled to receive it. Furthermore, we note that Trust T was the named residuary beneficiary of Decedent A's Last Will and Testament. Thus, as Personal Representative of Decedent A's Estate, Taxpayer B had to pay said Plan X distribution totaling Amount 1 to Trust T which, upon receipt, would have contributed Amount 1 to IRA Y pursuant to the First Amendment to Trust T referenced above. Under this set of facts, we do not believe that the Plan X's Administrator's error

in issuing the Date 7, 2008 Plan X distribution to the "wrong" payee should affect our response to your ruling request.

Thus, with respect to your third ruling request, we conclude as follows:

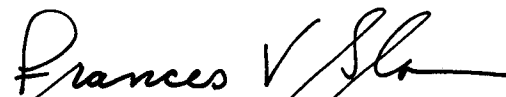
3. Our answers to ruling requests (1) and (2) are not affected by the Plan X's administrator's issuing the Date 7, 2008 Plan X distribution check to the Personal Representative of the Estate of Decedent A instead of the appropriate recipient, the Trustee of Trust T.

This ruling letter is based on the assumption that Plan X either was, is, or will be qualified within the meaning of Code section 401(a), and its associated trust tax-exempt within the meaning of Code section 501(a) at all times relevant thereto. It also assumes that IRA Y which was set up and maintained in the name of Taxpayer B either met, meets, or will meet the requirements of Code section 408(a) at all times relevant thereto. Additionally, it assumes the correctness of all facts and representations made with respect thereto including, but not limited to, the representation that amounts totaling Amount 1 were contributed to IRA Y within 60 days of the date of their distribution from Plan X.

A copy of this letter has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you have any questions concerning this letter ruling, please contact  
, Esquire (I.D. - ) at (Phone) or (FAX).

Sincerely yours,



Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
Form 437